

Serial No. 09/759,430

Docket No. HRT 228

REMARKS

Claims 14-30, and 36-72 are pending. Claims 1-13 and 31-35 are cancelled. Claims 41, 63, 65, 67, 69 and 71 are amended.

The Examiner rejected claims 43, 44, 63, 65, 67, 69 and 71 under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicants have amended claim 41 to provide an antecedent basis for claim 44.

As to claim 43, the Examiner states that it is unclear how to maintain "said 'anastomosing' if the anastomosis device is withdrawn". Claim 43 depends from a chain of claims that includes claim 14. Claim 14 claims an anastomosis device having, among other elements, a plurality of tissue securing elements. The tissue securing elements are the elements that maintain the anastomosis.

As to claims 63, 65, 67, 69 and 71, Applicants have amended the claims to claim that the anastomosis device has a bore and the plurality of openings communicate with one another via the bore. Applicants submit that at least Figure 21B provides support for these claims.

Applicants submit that the amendments to the claims overcome the 112 rejections and request the Examiner to withdraw the rejection.

The Examiner rejected claims 14, 16, 17, 19-30, 36, 38, 41, 42, 45-60, 62, 64, 66, 68, 70 and 72 under 35 U.S.C. § 102 as being anticipated by Kaster (US Patent No. 5,234,447). Applicants respectfully traverse the rejection.

At the outset, Applicants point out that the claims are directed to the embodiment depicted in Figures 16-26, which differ in kind from the first embodiment depicted in Figures 1-15. The first

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embodiments, like those depicted in Kaster, describe a set of staples that are deformed from a first position to a second position under a force applied by applier member 16 (16A). See Figures 3 and 4, and 8 and 9. By way of contrast, the claimed embodiments, depicted in Figures 16-26, do not require an applier to apply a force to move from a first position to a second position. Instead, as claimed in claim 14, the claimed anastomosis device has a plurality of tissue securing elements that are comprised of a material capable of being biased from an unbiased configuration to a biased configuration (see column 10: lines 11-16), and each separate tissue securing is held in a biased configuration in a plurality of openings (see column 10: lines 16-24). The tissue securing elements are inserted through the aperture in the second hollow tissue structure while they are in the biased configuration (see column 10: lines 34-41 and 54-59). Then, the plurality of tissue securing elements are permitted to move from the biased configuration to the unbiased configuration (see column 10: line 60--column 7: line 9).

The steps of claim 14 are not disclosed or suggested by Kaster. Kaster is a staple device that requires a staple forming tool 11 to deform staple 12. See Figures 14-19 and column 6: line 39-column 7: line 14. The staples of Kaster are not formed of a material capable of being biased from an unbiased configuration to a biased configuration; are not held in a biased configuration in a plurality of openings; and are not permitted to move from the biased to the unbiased position. Instead, staple 12 of Kaster are formed of stainless steel (column 5: line 55); staple 12 is positioned in the core unit 14 in an unbiased configuration (no bias applied to the staple) (col 6: lines 17-24); and the engaging members 44 of staple 12 are contacted by sleeve 13 (as shown in Figure 18) to cause them to bend into the orientation shown in Figure 19. Kaster simply does not teach or suggest the elements of claim 14. As a result, Applicants request the Examiner to withdraw the anticipation rejection.

The Examiner also rejected claims 14, 30, 45, 50, 52 and 58 under the judicially created obviousness type double patenting over claim 17 of copending US Patent Application Serial No.

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10/858,640, now claim 4 of U.S. Patent No. 7,056,326. Without commenting on the merits of the rejection, Applicants submit a terminal disclaimer to overcome this rejection.

Applicants grant permission to the Commissioner to charge any fee, including the fee associated with the additional dependent claims added by this amendment, that is required during the prosecution of this application.

Respectfully submitted,

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